

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America,

Case No. 3:05 CV 7340

Plaintiff,

MEMORANDUM OPINION
AND ORDER

-vs-

JUDGE JACK ZOUHARY

Alan G. Kunkle, et al.,

Defendants.

This matter is before the Court on *pro se* Defendants Gahlon and Betty Kunkle's Motion to Dismiss (Doc. No. 28). Defendants argue that the Court lacks subject matter jurisdiction over this case because (1) this action has not been properly authorized by the Secretary of the Treasury or commenced by the Attorney General or his delegate, and (2) Alan and Dewey Kunkle are United States citizens. Each of these arguments is without merit.

First, this suit is properly authorized under federal law. 26 U.S.C. § 7401 precludes civil actions to recover taxes and fines or forfeitures "unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced." *Id.* The term "Secretary" is defined as "the Secretary of the Treasury or his delegate." 26 U.S.C. § 7701(a)(11)(B). The Secretary of the Treasury has delegated, by regulation, the authority to authorize actions under 26 U.S.C. § 7401 and § 7403 to the "Chief Counsel of the Internal Revenue Service or his delegate." 26 C.F.R. §§ 301.7401-1, 301.7403-1. The Chief Counsel of the Internal Revenue Service expressly authorized the claims in the instant action (Declaration of Gerald C. Miller at ¶2 and Ex. A and B). Accordingly, this suit has been properly authorized by the Secretary of the Treasury.

Further, this suit has been properly commenced by the Attorney General. The Attorney General has delegated the authority to “conduct any legal proceeding” to the Assistant Attorneys General, who are “authorized to redelegate to Section Chiefs.” 28 C.F.R. § 0.13. The Government has produced a letter showing that the Assistant Attorney General, Tax Division, and the Chief of the Civil Trial Section, Northern Region of the Department of Justice Tax Division directed the United States Attorney, Northern District of Ohio, to commence this action (Miller Dec. at Ex. C). Accordingly, the commencement of this suit was properly directed by “the Attorney General or his delegate.”

Finally, Defendants Gahlon and Betty Kunkle allege that because Alan and Dewey Kunkle are citizens of the United States, they do not meet the requirements of 26 U.S.C. § 870 and the case must therefore be dismissed. But the United States has not asserted a claim under 26 U.S.C. § 870; indeed, this section does not exist. The only reference to “870” exists on the Civil Cover Sheet and is merely an internal code which designates the nature of the suit. Therefore, this claim is without merit.

The instant action has been properly authorized by the Secretary of the Treasury and commenced by the Attorney General. The United States has produced sufficient evidence to support a finding that the Court has subject matter jurisdiction over this suit. Accordingly, *pro se* Defendants Gahlon and Betty Kunkle’s Motion to Dismiss (Doc. No. 28) is denied.

IT IS SO ORDERED.

s/ Jack Zouhary
JACK ZOUHARY
U. S. DISTRICT JUDGE

December 5, 2006